

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

LA MERCED PRODUCE LLC,	)	
Plaintiff,	)	
	)	CIVIL ACTION
v.	)	
	)	Case No. 3:11-cv-00482
Y&E FOODS, LLC, d/b/a	)	
COMPARE FOODS, and	)	
ELIGIO PENA, Individually,	)	
Defendants.	)	

**DEFAULT JUDGMENT**

Upon *Plaintiff's Motion for Entry of Default Judgment* and *Memorandum of Law in Support of Plaintiff's Motion for Entry of Default Judgment* and the Court having considered such filings and the entire record in this case, and for good cause shown, IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

1. That Defendant Eligio Pena is a member and manager of Defendant Y&E Foods, LLC, a North Carolina limited liability company ("Y&E").
2. That Defendants are engaged in the business of purchasing or selling perishable agricultural commodities ("Produce") in wholesale or jobbing quantities and, therefore, qualify as "dealers" of Produce as defined by the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. §§ 499a-499t.
3. That Plaintiff sold to Y&E, and Y&E purchased from Plaintiff, Produce having an invoice value in the aggregate amount of \$46,775.25 as of the filing of the Complaint.
4. That Plaintiff is an unpaid supplier or seller of Produce having sold Produce to Y&E for which it remains unpaid.

5. That Y&E failed to deliver good funds to Plaintiff from the PACA trust assets, despite repeated demands from Plaintiff.

6. That Pena was a statutory trustee with a duty to safeguard the PACA trust assets and was required to maintain the trust assets in such a manner as to ensure there are, at all times, sufficient trust assets to satisfy all outstanding PACA trust obligations such as that owed to Plaintiff.

7. That Pena breached his fiduciary duties to Plaintiff by failing to ensure the preservation of trust assets.

8. That the attorneys' fees and costs incurred in the prosecution of this action were reasonable.

9. That Pena is liable to Plaintiff by default for a sum in the total amount of \$50,457.33, calculated as follows:

Unpaid Invoices	\$46,775.25
Accrued Interest	\$1,200.00
Attorneys' Fees and Costs	\$32,982.08
Total	\$80,827.33
Minus Recovery from Y&E	(\$30,500.00)
Net Judgment	\$50,457.33

SO ORDERED

Signed: June 6, 2012



Graham C. Mullen  
United States District Judge

